

Message Text

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FM SECSTATE WASHDC
TO AMEMBASSY OTTAWA

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E.O. 11652: N/A

TAGS: MARR, CA

SUBJECT: LABOR PROBLEMS AT GOOSE BAY

REFS: (A) OTTAWA 1679; (B) STATE 033056

1. AS STATED IN REF B, U.S. REPRESENTATIVES ARE PREPARED TO DISCUSS WITH APPROPRIATE CANADIAN AUTHORITIES, AT EITHER THE FEDERAL OR PROVINCIAL LEVEL, SPECIFIC CLAIMS OF INDIVIDUAL CANADIAN EMPLOYEES AT GOOSE BAY. THE USG IS NOT PREPARED TO TURN OVER EMPLOYEE RECORDS TO CANADIAN AUTHORITIES AT THIS TIME, BUT IS WILLING TO WORK WITH THEM TO RESOLVE THE CLAIMS.

2. WITH RESPECT TO THE SPECIFIC CLAIM OF MS SHEILA SCOTT FOR OVERTIME IN EXCESS OF FORTY HOURS, HER TIME AND ATTENDANCE CARDS WERE SHIPPED FROM GOOSE BAY, ALONG WITH MANY OTHER OFFICIAL FILES, TO THE NEW ENGLAND AREA EXCHANGE, UNCLASSIFIED

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FORT DEVENS, MASSACHUSETTS AT THE TIME OF THE MAJOR DRAWDOWN AT GOOSE BAY. HOWEVER, SINCE ALL RECORDS HAVE NOT YET REACHED PERMANENT STORAGE, RETRIEVAL HAS NOT BEEN POSSIBLE TO DATE. THE USAF IS CONTINUING ITS EFFORTS TO RETRIEVE THE RECORDS AS SOON AS POSSIBLE.

3. USG WILLINGNESS TO CONSIDER MERITS OF SPECIFIC CLAIMS

OF INDIVIDUAL EMPLOYEES SHOULD NOT BE TAKEN BY GOC AS ASSUMPTION OF LIABILITY FOR RETROACTIVE OVERTIME OR VACATION PAY. ALTHOUGH THE USAF IS OBLIGATED UNDER ARTICLE IX, PARA 4 OF NATO SOFA, WHEN EMPLOYING LOCAL CIVILIAN LABOR IN CANADA, TO ADOPT CONDITIONS OF EMPLOYMENT AND WORK LAID DOWN BY CANADIAN LAW, IT IS NOT DIRECTLY SUBJECT TO CANADIAN LABOR LAW. SOME STATEMENTS IN THE EXTAFF LETTER OF APRIL 27, 1976, QUOTED IN REF A SEEM TO OVERLOOK THIS DISTINCTION. IF EXTAFF HAS ANY DOUBT REGARDING THIS INTERPRETATION OF ARTICLE IX, PARA 4 OF NATO SOFA, EMBASSY SHOULD REFER TO FOLLOWING STATEMENT CONTAINED IN LETTER OF DECEMBER 8, 1964, FROM ALLAN MACEACHEN TO MEMBER OF HOUSE OF COMMONS, WHEN MACEACHEN WAS MINISTER OF LABOR, (ENCLOSURE TO EMBASSY AIRGRAM A-510 OF 11 JAN 1965): "YOU WILL SEE, THEREFORE, THAT THE CONDITIONS OF EMPLOYMENT AND WORK, IN PARTICULAR WAGES, ARE TO BE THOSE LAID DOWN BY THE LEGISLATION OF THE RECEIVING STATE. ARTICLE IX OUTLINES THE STANDARDS TO BE APPLIED BUT DOES NOT BY SUCH WORDS, MAKE THE UNITED STATES AIR FORCE SUBJECT TO THE LAWS OF THE RECEIVING STATE."

4. SINCE THE USAF IS NOT SUBJECT TO CANADIAN LABOR LAW, BUT IS ONLY OBLIGED TO ADOPT LABOR CONDITIONS FOUND IN CANADIAN LAW, PASSAGE OF A NEW CANADIAN LAW INCREASING THE BENEFITS OF CERTAIN TYPES OF EMPLOYEES DOES NOT CONFER UPON LOCAL EMPLOYEES OF USAF AUTOMATIC LEGAL ENTITLEMENT TO SUCH BENEFITS. IF CANADIAN AUTHORITIES QUESTION THE USAF IMPLEMENTATION OF LABOR STANDARDS
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DERIVED FROM CANADIAN LAW, IT IS A MATTER TO BE RESOLVED BY DISCUSSION BETWEEN THE APPROPRIATE CANADIAN AND U.S. AUTHORITIES.

5. THE CORRESPONDENCE RELATING TO THE SCOTT CLAIM WHICH WAS ATTACHED TO EXTAFF LETTER OF APRIL 27, 1976, SHOWS THAT THE BASE EXCHANGE AT GOOSE BAY CHANGED ITS OVERTIME POLICY UPON BEING ADVISED BY NEWFOUNDLAND AUTHORITIES OF THE NEW STANDARDS REQUIRED BY LOCAL LAW. ALTHOUGH THIS WAS OVER A YEAR AFTER THE EFFECTIVE DATE OF THE NEW LAW, IT WAS APPARENTLY THE FIRST INFORMATION RECEIVED FROM NEWFOUNDLAND AUTHORITIES THAT THEY CONSIDERED THE NEW STANDARDS APPLICABLE TO THE BASE EXCHANGE. SINCE THE SCOPE OF THE LAW WAS NOT CLEAR, APPARENTLY HAVING A LIMITED APPLICATION TO "ASSISTANTS" IN "SHOPS," THE DELAY IN INCORPORATING THE NEW OVERTIME STANDARDS INTO BASE EXCHANGE EMPLOYMENT POLICY DOES NOT APPEAR UNREASONABLE. IN FACT, THE ACTUAL REQUIREMENTS OF THE "HOURS OF WORK ACT" AND THE APPLICABILITY OF THE STANDARDS CONTAINED THEREIN TO VARIOUS

BASE EXCHANGE EMPLOYEES IS STILL NOT CLEAR TO US. IT MAY
BE THAT THE BASE EXCHANGE IN APPLYING THE OVERTIME

PROVISIONS OF THE LAW TO ALL ITS EMPLOYEES AS OF JANUARY
13, 1975, ACTUALLY EXCEEDED ITS OBLIGATIONS UNDER NATO
SOFA WITH RESPECT TO AT LEAST SOME, IF NOT ALL, OF
ITS EMPLOYEES.

6. ALTHOUGH WE DO NOT FEEL THAT THE DOCUMENTATION
SUBMITTED TO DATE SUPPORTS THE PAYMENT OF ANY CLAIM, THE
USAF WILL CONTINUE ITS EFFORTS TO LOCATE THE EMPLOYMENT
RECORDS IN QUESTION IN ORDER TO ASSURE CONSIDERATION IS
GIVEN TO ALL RELEVANT EVIDENCE IN ASSESSING THE MERITS
OF THE SCOTT CLAIM AND ANY OTHERS THAT MAY BE SUBMITTED.
IN THE MEANTIME, WE WOULD WELCOME ANY ADDITIONAL
DOCUMENTS OR INFORMATION WHICH CANADIAN AUTHORITIES DEEM
RELEVANT. FYI. WE WOULD FIND PARTICULARLY HELPFUL A
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COPY OF THE NEWFOUNDLAND HOURS OF WORK ACT, CITED AS HOURS
OF WORK ACT OF 1963, AS AMENDED, 4 REVISED STATUTES OF
NEWFOUNDLAND, CHAPTER 158, AND ANY OTHER LAWS DEEMED
APPLICABLE. ALSO ANY EXISTING AUTHORITATIVE LEGAL
OPINIONS OR OTHER EVIDENCE OF SCOPE OF TERM QUOTE
ASSISTANTS END QUOTE AND OF TERM QUOTE SHOPS END QUOTE
WOULD BE VERY HELPFUL FOR USG REVIEW. END FYI.

7. FYI. SINCE WE ARE DEALING WITH A USG OBLIGATION
UNDER INTERNATIONAL AGREEMENT, RATHER THAN WITH A
STRICTLY LEGAL CLAIM OF INDIVIDUALS AGAINST USG, STATUTE
OF LIMITATIONS QUESTION DOES NOT APPEAR TO BE DECISIVE.
END FYI.

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